

UNITED STATES DISTRICT COURT

DISTRICT OF NEW HAMPSHIRE

William J. Pandolfi,  
Plaintiff

v.

Civil No. 05-cv-165-SM

Ashbelt T. Wall, Director of the  
RI Adult Correctional Facility,  
Defendant

**O R D E R**

Petitioner has been given a number of "second chances" by the Magistrate Judge to either meet the exhaustion requirement with respect to all of his federal habeas claims or to elect to proceed only on his exhausted claims, understanding that his unexhausted claims may well be lost. Petitioner has obvious difficulty in addressing these issues squarely, and his pleadings are not quite responsive, and always difficult to decipher.

The Magistrate Judge has now recommended that the petition be dismissed as a mixed petition of exhausted and unexhausted claims. Report and Recommendation (document no. 24). Petitioner objects, claiming that he actually did elect to proceed only on his exhausted claims in a timely response to the Magistrate Judge's earlier order requiring him to either demonstrate

exhaustion (petitioner having by then been given more than ample time to do so, and petitioner having moved to reopen this stayed case after having supposedly done so) or elect to proceed only on the exhausted claims.

Plaintiff wrote, in response to the Magistrate Judge's directive:

"10. That if this filing doesn't satisfy the exhaustion question, then with respect I request you give the transcripts disclosed within carefull (sic) consideration." (document no. 23)

Petitioner now says, in his latest objection (document no. 25), that he meant to write:

"10. That if this filing doesn't satisfy the exhaustion question in the 3 remaining claims, and the transcriptions from the hearing appealed from doesn't satisfy exhaustion, then with a noted objection I feeling extorted to do so withdraw the three "unexhausted" claims,"

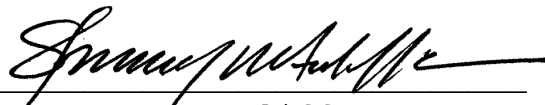
and he attaches what he says is a copy of his handwritten "draft" of the typed response actually filed.

Taking petitioner at his word, and stretching a willingness to suspend disbelief to its limit, the court will permit

petitioner to proceed on the seven exhausted claims rather than dismiss the petition as a mixed one.

The amended petition and Magistrate Judge's prior orders and reports, as well as this order will be served upon the Attorney General of New Hampshire and an answer or other response filed as required.

**SO ORDERED.**

  
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Steven J. McAuliffe  
Chief Judge

June 14, 2007

cc: William J. Pandolfi, pro se  
Attorney General, State of NH